

1987

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ABORIGINAL LAND (LAKE CONDAR AND FRAMLINGHAM
FOREST) BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the

Minister for Aboriginal Affairs

The Hon A C Holding M P)

GENERAL OUTLINE

The Government of the State of Victoria has requested the Commonwealth Parliament to enact legislation to provide for the vesting and control of two parcels of land in Victoria to two Aboriginal Corporations.

The Aboriginal land (Lake Condah and Framlingham Forest) Bill 1987 will:

- . provide for the vesting of the Condah land in the Kerrup-Jmara Elders Aboriginal Corporation and the vesting of Framlingham Forest in the Kirrae Whurrong Aboriginal Corporation (clauses 6 & 7);
- . provide for compensation to be paid for prior interests in the vested land (clauses 8, 9, 10, 11 & 12);
- . grant the two Aboriginal Corporations full power of management, control and enjoyment of their land subject to certain conditions (clauses 13, 14, 21 & 22);
- . give the Aboriginal Corporations wide by-law making powers to regulate activities on their land (clauses 15 & 23);
- . require the setting up by the two Aboriginal Corporations of a register of sites on the vested land which are sacred and significant (clauses 16 & 24);
- . provide for the setting up of a Committee of Elders for both Aboriginal Corporations with powers to determine, subject to certain conditions, membership of the Aboriginal Corporations and determine anything with respect to matters of spiritual, cultural and religious significance to the Aboriginal Corporations (clauses 18 & 26);

- . make provision in case of winding-up of the two Aboriginal Corporations (clauses 19 & 27);
- . provide for a scheme for the regulation of mining activity on the two parcels of land (clauses 30-37);
- . provide for the establishment of two trust funds to receive monies determined by regulation for distribution in accordance with the Bill (clause 38).

FINANCIAL IMPACT

- . Provision is made for the payment of compensation to the holders of existing interests in the Condah land and Framlingham Forest. The only holder of pre-existing interest is the State of Victoria. The cost of compensation for Victoria's interest is estimated to be \$1.302m.
- . The setting up of the Trust Funds will entail some expenditure. It is intended that the regulations provide for the payment of mining royalty equivalents. The exact scheme of the regulations will be determined at the stage that mining operations on either of the two parcels of land is likely to take place.
- . The costs of administration of the Bill will be borne by the State of Victoria.

NOTES ON CLAUSES

PART I: Preliminary

Preamble

Clause 1: Short Title

Clause 2: Commencement

1. Provides that Part I of the Act will come into operation on the day the Act receives Royal Assent. The rest of the provisions will come into effect on days fixed by proclamation.

Clauses 3: Interpretation

2. The Act will provide for definitions of "Aboriginal", "Community Council", "Condah Land", "Corporation", "Crown", "day of vesting", "Framlingham Reserve", "Framlingham Forest", "Governing Committee", "interest", "Kerrup-Jmara Elders Aboriginal Corporation", "Kirrae Whurrong Aboriginal Corporation", "mineral", "mining operation", "mining purposes", "mining tenement", and "relevant land".
3. The Act will also provide definitions which relate to the Lands Acquisition Act 1955.

Clause 4: Crown

4. The clause will make the Act bind the Crown both in right of the Commonwealth and the State of Victoria.

Clause 5: Delegation

5. The Minister will have the power to delegate his powers under the Act to a Minister of the Crown of the State of Victoria or to officers of his Department.
6. The Victorian Minister who receives such a delegation may further delegate his powers to officers of the State Public Service.
7. Notwithstanding the delegation of any of his powers, the Minister may still exercise those powers.

Clause 6: Vesting of Condah Land

8. On the commencement of this section the Condah land, other than rights to minerals is vested, by force of the Act, in the Kerrup-Jmara Elders Aboriginal Corporation free of all interests other than interests in minerals. The land will not at any stage vest in the Commonwealth.
9. The Condah land is described by a plan in Part A and Part B of Schedule I. Certain roads described in Part A are closed as roads on the commencement of this section.

Clause 7: Vesting of Framlingham Forest

10. On the commencement of this section, Framlingham Forest, other than rights in the minerals is vested, by force of the Act in the Kirrae Whurrong Aboriginal Corporation free of all interests other than interests in minerals. The land will not at any stage vest in the Commonwealth.
11. The Framlingham Forest is described in a plan in Schedule 2 of the Act.

Clause 8: Conversion of interests into claims for Compensation

12. Interests of the State of Victoria or any other person in the Condah land or Framlingham Forest are converted into rights to compensation under this Act.

Clause 9: Notice to owners

13. The Minister must, as soon as possible, after the vesting of the Condah land or Framlingham Forest under this part cause a copy of a notice of vesting to be served on every person who had an interest in the land before that vesting if he can find such holders of interests by diligent inquiry.
14. If he cannot find the identity of an owner he may cause a copy of the notice of vesting to be published circulating in the district where the land is situated.

Clause 10: Registration of Vesting

15. After the commencement of section 6 or 7, the Secretary to the Attorney-General's Department or a person authorised under sub-section 55E(4), the Judiciary Act 1903 may lodge with the Registrar-General of Victoria a copy of the notice of vesting signed by the Secretary or the person authorised.
16. The officer who has a copy of a notice of vesting lodged with him in pursuance of sub-section 1 may register that notice as if it were a grant, conveyance, memorandum or instrument of transfer of the land to the Corporation duly executed under the laws of Victoria.

Clause 11: Compensation

17. The right to compensation given under section 8 of this Act is to be treated as if it were a right to compensation under section 11 of the Lands Acquisition Act 1955. The amount of compensation is then determined in accordance with Part IV of the Lands Acquisition Act 1955. Essentially where agreement

cannot be reached on the amount of compensation payable the person claiming compensation may bring an action in either the High Court or the Supreme Court of Victoria for the determination of the amount of compensation.

Clause 12: Miscellaneous

18. This provision sets out those sections of the Lands Acquisition Act 1955 which will apply in relation to land that is vested by force of this Act. Those sections relate to matters such as applications to the High Court or Supreme Court for determination of compensation (section 13), possible payment of rates on vested land by the Minister (section 55), payment of the costs and charges of vesting by the Commonwealth (section 58), payments by the Commonwealth being a good discharge of its obligations (section 59), and the vesting of Federal jurisdiction in State and Territory Courts for the purposes of the Lands Acquisition Act 1955 (section 62).

PART III Management of the Condah Land

Clause 13: Management, transfer or lease of land

19. This clause provides that upon the vesting of the Condah land the Kerrup-Jmara Elders Aboriginal Corporation (the Corporation) has full powers of management, control and enjoyment of that land subject to the laws of Victoria and the Commonwealth.
20. Sub-clause 13(1) (b) gives the Corporation the power to transfer its interest in the land to another Aboriginal group incorporated under the Aboriginal Councils and Associations Act 1976 providing that no adult member of the Corporation objects (see clause 13 (2)).
21. Sub-paragraph 13(1) (c) gives the Corporation the power to give a lease or licence over the Condah land to any person subject to the provisions of sub-clause 13(3) which requires

that Ministerial consent be obtained for any lease over three to any person who is not a statutory authority or the Crown.

Clause 14: Rights of access over Condah land

22. All rights of access over Condah land existing prior to the day of vesting are preserved by this clause other than the right of access provided by the roads shown hatched on the plan in Part A of Schedule I.
23. Clause 14(2) enables a person authorised under a law of the Commonwealth or Victoria to enter and remain on Condah land.

Clause 15: By-laws

24. By sub-clause 15(1), the Corporation is given the power to make by-laws which are not inconsistent with laws of the Commonwealth or Victoria, with respect to a range of matters set out in the Act.
25. Sub-clause (2) states that the by-laws may provide that a contravention of a by-law is an offence.
26. Sub-clause (3) gives a regulation making power for the imposition of penalties for an offence against the by-law. It also provides for a maximum penalty of a fine of \$500 for a natural person (clause 15(3) (a)) and \$2,500 for a body corporate.
27. The Governing Committee is obliged by sub-clause 15(5), to give a copy of the by-law to the Minister within 7 days of its being made.
28. The by-laws have no effect unless approved by the Minister (clause 15(6)) and where the Minister approves the by-laws he shall cause the by-laws to be notified in the Gazette (clause 15(7) (a)) and cause a copy of the by-laws to be laid before each House of the Parliament within 15 sitting days of that House after he gives the approval (clause 15(7) (b)).

29. The by-laws take effect from the day of notification in the Gazette or such later date as is specified (clause 15(8)) and are void if not laid before each House of the Parliament (clause 15(9)).
30. Clause 15(10) provides that the provision of the Acts Interpretation Act 1901 which apply to the repeal of regulations apply to the revocation of by-laws by either House.

Clause 16: Sacred and significant sites

31. This provision requires the Corporation to compile a register of sacred and significant sites on the Condah land. If the boundaries of the sites are known to be identified by those boundaries (clause 16(1) (a)) or if a site is known to exist but has not been specifically identified by as much of the boundary as is known (clause 16(1) (b)).
32. The Corporation shall keep the register in a manner so as to prevent its disclosure, excepting for purposes under Part II A of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, without the permission of the Governing Committee (clause 16(2)).
33. The Governing Committee must make the register available to the Minister if he or she requests it for determining an application for permission to carry on mining operations (clause 16(3)).

Clause 17: Committee of Elders

34. This clause establishes the Kerrup-Jmara Committee of Elders which is composed of those who in accordance with Aboriginal tradition and practice and by recognition of the Kerrup-Jmara community are recognised to be the members of the Committee of Elders.

Clause 18: Powers of Committee of Elders

35. The Committee of Elders has power to determine the eligibility of persons to be members of the Corporation, subject to the provisions of the Aboriginal Councils and Associations Act 1976 which relate to membership (clause 18(1) (a)).
36. Further, the Committee of Elders may determine anything with respect to matters of spiritual, cultural and religious significance to the Corporation, the management of sacred sites (clause 18(1) (b) (ii)), the maintenance and application of the traditional laws and customs of the Corporation (clause 18(1) (b) (iii)), the general harvesting and use of animal and vegetable life found on the Condah land (clause 18(1) (b) (iv)) and may hear and determine disputes within the Corporation concerning traditional matters (clause 18(1) (c)).
37. A decision of the Committee of Elders is binding on all members of the Corporation (clause 18(2)).
38. The Corporation must act in accordance with the Committee of Elders decisions concerning matters over which the committee has power (clause 18(3)) but nothing in this section is intended to give the Committee of Elders any judicial power (clause 18(4)).

Clause 19: Winding Up

39. This clause provides that if the Corporation is wound up and its interest in the land has not been transferred in accordance with this Act, the Condah land is then vested in the Commonwealth (clause 19 (a)).
40. The Governor-General is given the power to execute a deed of grant over the land to the extent of the Corporation's interest to another Aboriginal group incorporated under the Aboriginal Councils and Associations Act 1976 and approved by

the Minister. Further, the members of that new association must be descendents of the Kerrup-Jmara clan (clause 19 (b)).

Clause 20: Change of Ownership

41. Clause 20 makes it clear that if the Condah land is transferred to another Aboriginal group in accordance with this Act then that new group stands in the place of the Kerrup-Jmara Elders Aboriginal Corporation and has the same rights, duties and liabilities of that Corporation under this Act.

PART IV Management of Framlingham Forest

42. This Part gives to the Kirrae Whurrong Aboriginal Corporation the same powers, duties and responsibilities as Part III gives to the Kerrup-Jmara Elders Aboriginal Corporation. There are some additional provisions which relate to membership which were not in Part III.

Clause 21: Management, transfer or lease of Framlingham Forest

43. The Kirrae Whurrong Aboriginal Corporation (the Corporation) has the same powers as given to the Kerrup-Jmara Elders Aboriginal Corporation by clause 13. These include the full power of management, control and enjoyment of Framlingham Forest (clause 21(1) (a)), the power to transfer to another Aboriginal group (clause 21(1) (b)) the power to give a lease or licence over Framlingham Forest subject to certain limitations (clause 21(1) (c)).
44. Clause 21(2) prevents transfer of Framlingham Forest to another Aboriginal group if any adult member of the Corporation objects and clause 21(3) prevents the Corporation from giving a lease or licence for a period in excess of three years to any person without Ministerial consent unless the lease or licence is to a statutory authority on the Crown.

Clause 22: Rights of access over Framlingham Forest

45. This clause protects any rights of access over Framlingham Forest which existed immediately before the day of vesting other than the right of access provided by the roads shown hatched or the plan in Schedule 2. This provision is the equivalent of Clause 14.
46. Clause 22(2) enables a person authorised under a law of the Commonwealth or Victoria to enter and remain on Framlingham Forest.

Clause 23: By-laws

47. This clause is the equivalent of clause 15 and gives the Kirrae Whurrong Aboriginal Corporation wide powers to make by-laws not inconsistent with Victoria or the Commonwealth (clause 23(1)).
48. Again the clause states that a by-law may provide that a contravention of a by-law is an offence (clause 23(2)) and makes provision for regulations providing penalties for an offence against the by-laws. A maximum penalty is set (clause 23(3)).
49. The Community Council must provide the Minister with a copy of the by-law within 7 days after it is made (clause 23(4)) and the by-law has no effect unless the Minister has approved it (clause 23(5)).
50. Where the Minister approves a by-law he must cause the by-law to be notified in the Gazette (clause 23(7) (a)) and cause a copy of the by-laws to be laid before each House of the Parliament within 15 sitting days of that House after he gives the approval (clause 23(7) (b)).
51. The by-laws take effect from the day of notification in the Gazette or such later date as is specified (clause 23(8)) and are void if not laid before each House of the Parliament (clause 23(9)).

52. Clause 23(10) provides that the provision of the Acts Interpretation Act 1901 which apply to the repeal of regulations apply to the revocation of by-laws by either House.

Clause 24: Sacred and significant sites

53. This provision requires the Corporation to compile a register of sacred and significant sites on Framlingham Forest. If the boundaries of the sites are known to be identified by those boundaries (clause 24(1) (a)) or if a site is known to exist but has not been specifically identified by as much of the boundary as is known (clause 24(1) (b)).
54. The Corporation shall keep the register in a manner so as to prevent its disclosure, excepting for purposes under Part II A of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, without the permission of the Governing Committee (clause 24(2)).
55. The Governing Committee must make the register available to the Minister if he or she requests it for determining an application for permission to carry on mining operations (clause 24(3)).

Clause 25: Membership

56. This clause provides a residency qualification for membership of the Kirrae Whurrong Aboriginal Corporation. Unless a person has resided on Framlingham Reserve, whether before or after the commencement of this section, for a continuous period of more than 12 months he or she is not eligible to be a member of the Corporation (clause 25(1)).
57. At least one half of the members of the Community Council of the Corporation must be residents of Framlingham Forest (clause 25(2)).

Clause 26: Committee of Elders

58. This clause establishes the Kirrae Whurrong Committee of Elders which is composed of those who in accordance with Aboriginal tradition and practice and by recognition of the Kirrae Whurrong Community are recognised to be the members of the Committee of Elders.

Clause 27: Powers of Committee of Elders

59. The Committee of Elders has power to determine the eligibility of persons to be members of the Corporation, subject to the provisions of the Aboriginal Councils and Associations Act 1976 which relate to membership (clause 27(1) (a)).
60. Further, the Committee of Elders may determine anything with respect to matters of spiritual, cultural and religious significance to the Corporation, the management of sacred sites (clause 27(1) (b) (ii)), the maintenance and application of the traditional laws and customs of the Corporation (clause 27(1) (b) (iii)), the general harvesting and use of animal and vegetable life found on the Condah land (clause 27(1) (b) (iv)) and may hear and determine disputes within the Corporation concerning traditional matters (clause 27(1) (c)).
61. A decision of the Committee of Elders is binding on all members of the Corporation (clause 27(2)).
62. The Corporation must act in accordance with the Committee of Elders decisions concerning matters over which the committee has power (clause 27(3)) but nothing in this section is intended to give the Committee of Elders any judicial power (clause 27(4)).

Clause 28: Winding Up

63. This clause provides that if the Corporation is wound up and its interest in the land has not been transferred in accordance with this Act, the Framlingham Forest land is then vested in the Commonwealth (clause 28 (a)).
64. The Governor-General is given the power to execute a deed of grant over the land to the extent of the Corporation's interest to another Aboriginal group incorporated under the Aboriginal Councils and Associations Act 1976 and approved by the Minister. Further, the members of that new association must be descendents of the Kirrae Whurrong clan (clause 28 (b)).

Clause 29: Change of Ownership

65. Clause 29 makes it clear that if the Framlingham Forest land is transferred to another Aboriginal group in accordance with this Act then that new group stands in the place of the Kirrae Whurrong Aboriginal Corporation and has the same rights, duties and liabilities of that Corporation under this Act.

PART V Mining

Clause 30: Mining operations

66. This clause (clause 30(1) (a)) prevents persons from carrying out mining operations, defined in clause 3 and including mining operations for the recovery of petroleum and stone, without the permission required under clause 31. The clause also prevents entry onto land for the purposes of carrying out mining operations and makes that a separate offence (clause 30(1) (b)).
67. For an offence against the provisions of clause 30(1) (a) maximum penalty will be a fine of \$5,000 for a natural person and \$25,000 for a body corporate and for an offence against

clause 30(1) (b) maximum penalties of \$1,000 or \$5,000 respectively.

68. Clause 30(2) makes it clear that pre-existing mining interests are not subject to the need to obtain permission. However, mining operations related to a renewal variation or extension of a mining tenement after the commencement of this clause will require permission.

Clause 31: Permission to carry out mining operations

69. Any person who has applied for the grant, renewal or extension of a mining tenement, after the coming into force of this section and who has the approval of the Minister, may apply to the appropriate Corporation for permission to carry out mining operations (clause 31(1)).

70. Such applications must be lodged with the Corporation in writing and contain all information the applicant provided in support of his application for a mining tenement under the Mines Act of Victoria (clause 31(2)).

71. The Corporation may ask for further information (clause 31(3)) and the applicant shall give a copy of the information supplied to the Minister (clause 31(4)).

72. The Corporation may grant permission, refuse permission, grant it with conditions not inconsistent with the Commonwealth or Victorian law (clause 31(5)) and after making its decision shall notify the applicant in writing (clause 31(b)). The applicant shall cause a copy of that notice to be given to the Minister within 7 days (clause 31(7)).

73. If a Corporation has not notified the applicant of its decision within 120 days, the Corporation is deemed to have refused permission (clause 31(8)).

74. The Corporation may require the applicant to pay a reasonable fee for expenses incurred in the processing of the

application (clause 31(9)). Such amounts as are so received, must be taken into consideration if the Corporation grants permission subject to a condition that any payment or other consideration must be given to the Corporation (clause 31(10)).

Clause 32: Payments and other Consideration

75. If the Corporation grants permission subject to a condition that payment or other consideration be made by the applicant who accepts that conditions, then this clause restricts the amount of such consideration at the exploration stage of mining activity.
76. Clause 32(2) (a) makes it clear that any payments sought must be reasonably related to the disturbance to the land and to the traditional owners of their lifestyle.
77. Clause 32(2) (b) states that payment or other consideration for the grant of permission to carry out mining operations at the exploration stage shall not exceed the amount that would have been payable under the Victorian Mines Act 1958, Petroleum Act 1958 and the Extractive Industries Act 1966 whichever is applicable to the mining tenement sought.
78. Clause 32(2) (c) provides that payments or other consideration may exceed the amounts mentioned in clause 32(2) (b) at the mining stage.

Clause 33: Conciliation and review

79. If a Corporation refuses permission or grants it with conditions the applicant does not accept, the applicant may notify the Minister who must arrange to meet with the Corporation and the applicant to attempt to conciliate the dispute (clause 33(1)).
80. If the conciliation is unsuccessful the applicant may ask the Minister to appoint an arbitrator (clause 33(2)) and the Minister shall so appoint (clause 33(3)).

81. A number of matters are then set out in the Act which the arbitrator must take into account when making his decision (clause 33(4)).
82. The arbitrator is able to confirm the Corporation's decision (clause 33(5) (a)), to vary it (clause 33(5) (b) or set it aside and substitute his own decision (clause 33(5) (c)). Clause 33(6) deems a decision of the arbitrator to be a decision of the Corporation.

Clause 34: Sacred or significant sites

83. Where a person applies for a mining tenement after the day of vesting the Minister must consult the appropriate Corporation to ascertain whether or not there are any sacred or significant sites on the area applied for which are registered under Section 16 or Section 24 (clause 34(1)).
84. If the Minister is satisfied that the land does contain such a site, he must give the applicant as much information about the site and its location as he thinks appropriate (clause 34(2) (a)) and the Corporation is deemed to have advised the Minister that it believes a declaration is required under Section 21F of Part II A of the Aboriginal and Torres Strait Islanders Heritage Protection Act 1984.
85. Unless the Minister specifically determines renewals and extensions of mining tenements are not covered by this provision (clause 34(3)).

Clause 35: Mining tenement ineffective in certain circumstances

86. Where a person receives the grant, renewal or extension of a mining interest, he shall not carry out any mining operations unless the Corporation has given its permission (clause 31), the Minister has declared that he is satisfied that the Corporation was given reasonable opportunity to make submissions to the relevant Victorian Minister of State

(clause 35(1) (b)), or the Minister has declared that he or she is satisfied that any registered sacred or significant site has been protected (clause 35(1) (c)).

Clause 36: Offences

87. This clause will make it an offence to offer a payment or other consideration so as to obtain the permission of the Corporation for the carrying out of mining operations unless that payment discharges a liability under this Act. Maximum penalty is \$2,000 for a natural person and \$10,000 for a body corporate.

Clause 37: Entry onto relevant land and mining tenements

88. Where a Corporation grants permission for the carrying out of a mining operation then the person who receives that permission and his agents, contractors and employees may enter onto the relevant land to carry out those mining operations (clause 37 (a)) subject to any conditions upon which the permission is granted (clause 37 (b)) and subject to the appropriate Victorian legislation relating to mining (clause 37 (c)). The rights granted under this section are also subject to Section 35.

Clause 38: Offences by Corporations

89. This clause provides for certain presumptions in relation to conduct engaged in by a Corporation which may be an offence against this Act. It is sufficient to show that a director, servant or an agent of a Corporation had a certain state of mind so as to establish the state of mind of the Corporation (clause 38(1)).
90. Conduct engaged in on behalf of the Corporation by a director, servant or agent within the scope of his authority or by any other person at the direction of a director, servant or agent of the Corporation shall be deemed to have been carried on by the Corporation (clause 38(2)).

PART VI Trust Funds

Clause 39: Trust funds

91. There are established by this section two trust funds to be known as the Condah Land Trust Fund and the Framlingham Forest Trust Fund respectively (clause 39(1) & (3)). Each Trust Fund will be subject to Section 62A of the Audit Act of the Commonwealth.
92. Those trust funds will receive such amounts as are determined by regulation. It is intended that the regulations will make provision for the payment of an amount of mining royalty equivalents to be determined if and when extraction of minerals takes place on either parcel of land (clause 39(2) & (4)).
93. The Consolidated Revenue Fund is appropriated accordingly (clause 39(5)). The Minister shall establish a trust fund to be known as the Aboriginal Advancement Trust Fund (clause 39(6)). That fund will receive one half of any money received by either of the other trust funds (clause 39(7) & (8)). The remaining half will be paid to the appropriate Aboriginal Corporation.
94. The Minister will also have power to make payments out of the Aboriginal Advancement Trust Fund (clause 39 (a)) and for the direct payment of royalties which would otherwise be paid into the Framlingham Forest or Condah land Trust Funds to a body representative of and administered by Aborigines for the advancement of Aborigines generally. (clause 39(10)).

PART VI Miscellaneous

Clause 40: Exemption from land tax

95. Both parcels of land are exempt from Victorian land tax.

Clause 41: Compensation

96. There will be a general provision relating to compensation where acquisition of an interest takes place not on just terms. This may happen in a situation where permission is not granted for mining operations necessary under a renewal, variation or extension of a pre-existing mining interest.

Clause 42: Regulations

97. The Governor-General is given the usual regulation making powers in relation to matters required or permitted by this Act.

